

DOCKET NO. J&amp;J-2045

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicants: Carvalho, et al.

Serial No.: 10/040,575

Art Unit: 3761

Filed : November 1, 2001

Examiner: Catharine L. Anderson

For : SANITARY ABSORBENT ARTICLE

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(Date)

Paul J. Higgins

Name of applicant, assignee, or Registered Representative

/Paul J. Higgins/  
(Signature)November 22, 2006

(Date of Signature)

**APPEALANT'S BRIEF ON APPEAL**

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**1. REAL PARTY IN INTEREST**

The real party of interest of the present application on appeal is the assignee, Johnson & Johnson Industria E Comercio LTDA.

**2. RELATED APPEALS AND INTERFERENCES**

There are no appeals or interferences known to appellant's legal representative or assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

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**CENTRAL FAX CENTER****NOV 22 2006****3. STATUS OF CLAIMS**

Claims 1-5 and 7-11 are pending in this application and have been finally rejected in the Final Office Action mailed February 7, 2006. Claims 6 and 12-14 were cancelled without prejudice during prosecution. Claims 1-5 and 7-11 are on appeal.

**4. STATUS OF AMENDMENT**

A Response after Final Rejection was filed with the United States Patent Office via facsimile on May 24, 2006 in response to the Final Office Action mailed February 7, 2006. In an Advisory Action mailed June 15, 2006 the Examiner indicated that the Response after Final Rejection failed to place the application in condition for allowance. Nonetheless, the Examiner considered the remarks contained in said Response after Final Rejection.

**5. SUMMARY OF CLAIMED SUBJECT MATTER**

The invention embodied by the subject application on appeal is directed to a sanitary napkin. The claimed sanitary napkin has a first configuration in which the napkin is structured and arranged with a brief style undergarment and a second configuration wherein the napkin is structured and arranged to be used with a thong style undergarment.

Claim 1 is the sole independent claim pending in the application and reads as follows.

1. A sanitary napkin comprising:

a central absorbent pad, the central absorbent pad having a liquid pervious cover layer, a liquid impervious barrier layer and an absorbent core between the cover layer and barrier layer, a longitudinal centerline, a lateral centerline, a pair of opposite longitudinal side edges, a first distal end and an opposite second distal end, a flap extending laterally outward from each longitudinal side edge along a line of juncture, each flap extending substantially along the lateral centerline and adapted to fold over a crotch portion of an undergarment in use,

said core being continuously tapered from the second end towards the first end, the barrier and the cover extending beyond the core,

the central absorbent pad further comprising two preferential bending axes, each preferential bending axis being defined by a respective edge of the core, each axis being inward from and adjacent to a respective longitudinal side edge and extending obliquely with respect to the longitudinal centerline, the axes converging towards the longitudinal centerline in the first distal end of the central absorbent pad,

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wherein the central absorbent pad has a pair of opposite side margins, each side margin being adjacent a respective preferential bending line and adapted to fold along said respective preferential bending line, each side margin being capable of being folded over an edge of a wearer's undergarment in use, and

wherein said napkin has a first configuration wherein said napkin is structured and arranged to be used with a brief style undergarment and a second configuration wherein said side margins are in a folded condition such that said napkin is structured and arranged to be used with a thong style undergarment.

#### 6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1-5 and 7-11 were finally rejected under 35 U.S.C. §103(a) as being unpatentable over Molas (US2002/0077618 A1) in view of Sturino (US5713886).

#### 7. ARGUMENT

Claims 1-5 and 7-11 were rejected under 35 USC 103(a) as being unpatentable over Molas (US 2002/0077618 A1) in view of Sturino (US5713886). The Examiner's rejections are respectfully traversed. It is respectfully submitted that a close review of the cited references reveal that they fail to disclose or suggest, either singularly or in combination, the invention as recited in claim 1.

The Examiner appears to essentially contend that Molas discloses all of the features of the claimed invention except for flaps extending outwardly from a longitudinal side edge as claimed. The Examiner's position is respectfully traversed.

The invention as set forth in claim 1 recites in part:

"a central absorbent pad, the central absorbent pad having a liquid pervious cover layer, a liquid impervious barrier layer **and an absorbent core between the cover layer and barrier layer ... said core being continuously tapered from the second end towards the first end, the barrier and the cover extending beyond the core ...**". (Emphasis Added)

Molas purports to disclose a pantiliner including a line of embossing 2, a central area 3, and side areas 4, 5. (Paragraph [0033]). Accordingly, Molas merely describes a pantiliner having different areas separated by an embossing. However, there is no disclosure whatsoever describing the structural details of a cover, core and barrier. In addition, there is no disclosure whatsoever that a core is arranged *between* a cover and a barrier, and that the cover and barrier extend beyond the core in the manner claimed. In fact, there is no way to ascertain the

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structure of any cover, barrier or core whatsoever from the Molas reference. In this regard, it is noted that there are no Figures in Molas that disclose the internal structure of the article.

In the Office Action dated February 7, 2006, at page 2, the Examiner states as follows:

"In response to applicant's argument that Molas fails to disclose the absorbent core being continuously tapered from the second end towards the first end, it is noted that the absorbent core 3 of Molas is tapered, as shown in Figure 2. The absorbent core is separate from side areas 4, 5 (see paragraph [0033]) and therefore the absorbent core is continuously tapered while the overall shape of the article, including side areas 4, 5, is an hourglass."

Based upon the above, it appears as if the Examiner is contending that the central area 3 of Molas corresponds to the core as recited in claim 1. It is respectfully submitted that this is improper. As noted above, claim 1 recites that the core is arranged *between the cover and the barrier*. Molas is silent as to a "core" or the relative position of such core to a cover and a barrier. Rather the "central area 3" of Molas is merely the area between embossings 2. Further, there is no disclosure whatsoever in Molas that any "core" is coterminous with the "central area". For example, any alleged "core" in Molas may very well extend into side areas 4, 5. There is simply no disclosure in Molas whatsoever regarding the structural details of any alleged cover, barrier or core. The Examiner appears to contend that the central area 3 of Molas is tapered and therefore discloses a "core being continuously tapered from the second end towards the first end" as recited in claim 1. Again it is impossible to ascertain from Molas the structure of any "core" or if any such core is even present in the described embodiments. For example the embodiments shown in Figures 1 and 2 of Molas could contain only a cover and barrier or alternatively, if a core is present, the core could very well extend into side areas 4 and 5 since "side areas (4,5) ... are in absorbent service when the pantliner is applied to a conventional, hourglass-shaped panty". (Molas, paragraph [0033]). It is simply impossible to ascertain, based upon the disclosure of Molas, the presence of a cover, barrier or core, or the structural details of such elements.

It is further submitted that the central area 3 of Molas is not "continuously tapered from the second end towards the first end" in the manner of the core of the present invention. The embossing lines 2 that define the central area 3 of Molas cease to taper at the lower end thereof but rather appear to be slightly diverging or at most parallel. Thus, it is submitted that central area 3 of Molas is not continuously tapered from the second end towards the first end.

In the Office Action, the Examiner further states as follows:

"In response to applicant's argument that Molas fails to disclose the barrier and cover extending beyond the absorbent core, it is

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noted that the barrier and cover extend beyond the absorbent core 3 to envelope the side areas 4, 5."

Again it appears as if the Examiner is contending that the central area 3 is a core arranged between a barrier and cover as claimed. However, as noted above, it is impossible to ascertain from Molas the presence or absence of a cover, barrier layer or core or the structural details of any such elements. Accordingly, it is respectfully requested that the Examiner identify the *specific* portion of Molas that shows a cover layer, barrier layer and core arranged between the cover layer and barrier, and wherein the cover layer and barrier layer extend beyond the core in the manner claimed.

The Examiner further contends that Molas discloses all aspects of the claimed invention with the exception of a flap extending outward from each side edge. The Examiner contends that Sturino discloses such a structure and thus concludes it would be obvious to modify the article disclosed in Molas to include flaps of the type disclosed in Sturino to thereby arrive at the claimed invention. It is respectfully submitted that even if such modification was made it would still fail to result in an article as claimed. As noted by the Examiner in the Office Action at page 3, "Sturino teaches the use of flaps placed **towards the front** ... of a sanitary napkin". (Emphasis Added) Conversely, the claimed invention, as set forth in claim 1, recites that each flap extends "substantially along the lateral centerline". Sturino fails to disclose any flaps that extend substantially along the lateral centerline as claimed.

Applicants submit that the above remarks and supporting information establish that the Examiner's cited grounds for rejections are improper and as such should be reversed. Applicants thus respectfully request that the Board of Patent Appeals and Interpretation find that the remaining claims are in condition for allowance, with instructions to the Examiner to allow the claims.

Respectfully submitted,

/Paul J. Higgins/

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**8. CLAIMS APPENDIX****1. A sanitary napkin comprising:**

a central absorbent pad, the central absorbent pad having a liquid pervious cover layer, a liquid impervious barrier layer and an absorbent core between the cover layer and barrier layer, a longitudinal centerline, a lateral centerline, a pair of opposite longitudinal side edges, a first distal end and an opposite second distal end, a flap extending laterally outward from each longitudinal side edge along a line of juncture, each flap extending substantially along the lateral centerline and adapted to fold over a crotch portion of an undergarment in use,

said core being continuously tapered from the second end towards the first end, the barrier and the cover extending beyond the core,

the central absorbent pad further comprising two preferential bending axes, each preferential bending axis being defined by a respective edge of the core, each axis being inward from and adjacent to a respective longitudinal side edge and extending obliquely with respect to the longitudinal centerline, the axes converging towards the longitudinal centerline in the first distal end of the central absorbent pad,

wherein the central absorbent pad has a pair of opposite side margins, each side margin being adjacent a respective preferential bending line and adapted to fold along said respective preferential bending line, each side margin being capable of being folded over an edge of a wearer's undergarment in use, and

wherein said napkin has a first configuration wherein said napkin is structured and arranged to be used with a brief style undergarment and a second configuration wherein said side margins are in a folded condition such that said napkin is structured and arranged to be used with a thong style undergarment.

2. A sanitary absorbent article as defined in claim 1, wherein said preferential bending axes extend from the lateral centerline to the first distal end.

3. A sanitary absorbent article as defined in claim 1, wherein said preferential bending axes extend from the second distal end to the first distal end.

4. A sanitary absorbent article as defined in claim 1, wherein the first distal end has a width of less than 30 mm.

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5. A sanitary absorbent article as defined in claim 1, wherein the first distal end has a width of about 15 mm to 20 mm.
7. A sanitary absorbent article as defined in claim 1, wherein each side margin has an adhesive attachment means on a garment faceable side thereof that is adapted to allow a wearer to adhesively affix the side margins to their undergarment in use.
8. A sanitary absorbent article as defined in claim 1, wherein the side margins have a lateral dimension as measured from the preferential bending line to the longitudinal side edge of at least 7 mm.
9. A sanitary absorbent article as defined in claim 1, wherein the side margins have a lateral dimension as measured from the preferential bending line to the longitudinal side edge is preferably about 10 to 20 mm.
10. A sanitary absorbent article as defined in claim 1, wherein said two preferential bending axes are structured and arranged to permit at least a portion of said central absorbent pad to be folded along a respective one of said preferential bending axes.
11. A sanitary absorbent article as defined in claim 10, wherein said portion of said central absorbent pad folded along said respective one of said preferential bending axes is structured and arranged to alter said central absorbent pad from an initial substantially hourglass shape to a tapered shape.

**9. EVIDENCE APPENDIX**

Not Applicable

**10. RELATED PROCEEDINGS APPENDIX**

Not Applicable